Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1975

No. 75-497 1

RICHARD BUSH and MICHAEL LESLIE EINSTEIN, individually and as representatives of similarly situated residents of the State of Florida,

Appellants,

v.

JAMES A. SEBESTA, as Supervisor of Elections of Hillsborough County, Florida, REUBEN O'D. ASKEW, as Governor of the State of Florida, JAMES TAYLOR, as Clerk of the Circuit Court of Hillsborough County, Florida, DOROTHY W. GLISSON, as Secretary of State of the State of Florida, and their successors in each office.

Appellees.

On Appeal from the United States District Court for the Middle District of Florida

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JURISDICTIONAL STATEMENT

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IN THE
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No._____

RICHARD BUSH and MICHAEL LESLIE EINSTEIN, individually and as representatives of similarly situated residents of the State of Florida,

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JAMES A. SEBESTA, as Supervisor of Elections of Hillsborough County, Florida, REUBEN O'D. ASKEW, as Governor of the State of Florida, JAMES TAYLOR, as Clerk of the Circuit Court of Hillsborough County, Florida, DOROTHY W. GLISSON, as Secretary of State of the State of Florida,[1] and their successors in each office.

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On Appeal from the United States District Court for the Middle District of Florida

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the United States District Court for the Middle District of Florida is unreported and is set out in the appendix at 1a. A prior opinion of that court holding moot all claims after remand by this Court is unreported and is set out

1. Dorothy W. Glisson has succeeded Richard Stone as Secretary of State. Rule 48.3, Revised Rules of the Supreme Court of the United States.

at 10a.[1]

JURISDICTION

Appellants were intervenors below in one of five consolidated cases challenging a state statutory system of filing fees and petitions for access to the ballot. Both plaintiffs and defendants were class representatives. The cause of action rested on the first and fourteenth amendments of the Constitution of the United States and §1983 of Title 42, United States Code.[2] Jurisdiction was alleged in the district court under Title 28, §§ 1331, 1343(3) and (4), 2201, 2281 and 2284. A three-judge court was properly convened under 28 U.S.C. §§ 2281 and 2284 because appellants sought an injunction against parts of the election code of the State of Florida. The statutes, §§ 99.092, 99.095, 99.103, and 103.121(1)(g), Florida Statutes, are set out in the appendix at 15a.

The opinion of the district court dismissing the complaint was entered on June 2, 1975. Notice of appeal was filed with

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1. The original opinion of the district court is reported sub nom. Fair v. Taylor, 359 F. Supp. 304 (M.D. Fla. 1972) (three-judge court), vacated and remanded, 416 U. S. 918 (1974).

2. Appellants upon intervening adopted the jurisdictional allegations of the plaintiff. The original complaint alleged jurisdiction under various other statutes not relied on here by appellants.

the United States District Court for the Middle District of Florida on July 31, 1975, and is appended hereto at 25a.

This Court has jurisdiction under 28 U.S.C. §1253. The cases of Lubin v. Panish, 415 U.S. 709 (1974), Storer v. Brown, 415 U.S. 724 (1974), American Party of Texas v. White, 415 U.S. 767 (1974) and MTM, Inc. v. Baxley, ___U.S.___, 95 S.Ct. 1278 (1975), support the jurisdiction of this Court.

QUESTIONS PRESENTED

1. Whether the petition system [§99.095, Florida Statutes] which restricts persons seeking to qualify for partisan primary ballot position to a twenty-one day period for gathering signatures violates the first and fourteenth amendments of the Constitution of the United States where the beginning date is unrelated to any other aspect of the statutory scheme for nominations.

2. Whether candidates for four and five member district offices seeking to place their names on the primary ballot are denied the equal protection of the laws by being required to garner four and five times the number of signatures as a candidate for the same office from a single member district.

3. Whether the filing fee system [§§99.092 (1), 99.103 and 103.121(1)(g), Florida Statutes] which requires candidates in primaries to pay five percent of the salary of the office, 91 percent of which the State pays unencumbered to the political party, violates the first and fourteenth amendments of the Constitution of the United States in view of the less restrictive procedures available.

STATEMENT OF THE CASE

This action was begun in 1972 as a challenge to Florida election statutes which required filing fees for candidates for public office and provided no alternative means for access to the ballot. Richard Bush, desiring to be a candidate for the Democratic Party nomination to the State House of Representatives in Districts 53-56, was allowed to intervene as a plaintiff. The district court ordered a petition system implemented for the 1972 elections. Bush appealed to this Court, arguing that the petition requirement treated candidates from multi-member districts unequally and that the fee system under which 91 percent of the fee and party assessment (five percent of the annual salary of the office sought) is remitted to the political party violated the fourteenth amendment.

This Court, on April 15, 1974, vacated and remanded for further consideration in light of Lubin v. Panish, 415 U.S. 709 (1974); Storer v. Brown, 415 U.S. 724 (1974); and American Party of Texas v. White, 415 U.S. 767 (1974).

Thereafter the State of Florida enacted a statute effective May 31, 1974, altering the petition process which had been ordered by the court and established an alternative method of qualifying through the petition process. On June 18, 1974, the district court believing the case moot because of the passage of the 1972 elections and more importantly because of the enactment of the new statute, directed that the case be dismissed unless amended complaints challenging the new statute were filed. Bush filed such amended complaint alleging the new statute

had the same defects as the previous court order and continuing his challenge to the collection of the filing fee and party assessment which is rendered to the political party.

Michael Leslie Einstein sought to intervene as a plaintiff, alleging that he sought to be a candidate for the Democratic Party nomination to the State House of Representatives in Districts 57-61 in 1974. He alleged he was unable to pay the filing fee and party assessment for the office sought ($600.00) but was able to pay the amount of the filing fee retained by the State (fifteen percent of the three percent or $54.00). He also alleged that he would be able to garner petition signatures equal to one-fifth of those required by the statute (he seeking to run in a five member district). Einstein thereafter amended his proposed complaint in intervention alleging that by drawing upon a contribution and personal funds intended for his educational and living expenses he was able to pay the qualifying fee and party assessment of six hundred dollars which he had done. He alleged this placed an undue burden on his personal resources and on resources otherwise available to him. He further sought the return of that portion of his filing fee and party assessment which would be forwarded to the political party.[1]

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1. Einstein's motion to intervene was never ruled upon in a separate order but the opinion of the district court dismissing the complaint refers to him as a plaintiff.

A. The Statutory Scheme

1. The Petition Requirement. Section 99.095, Florida Statutes provides that a candidate for nomination for any office who is unable to pay the filing fee and party assessment without imposing an undue burden on his personal resources or on resources otherwise available to him may qualify by filing an oath to that effect with the officer before whom he would qualify for office. The oath must be filed after noon on the eighty-fourth day prior to the first primary and no later than noon of the sixty-third day prior to the first primary, a period of twenty-one days. No signatures may be obtained on any nominating petitions prior to filing the oath. To have his name placed on the ballot the candidate must garner the signatures of a number of electors within the district registered in the political party by which he seeks nomination equal to at least five percent of the total number of registered electors in that particular party within the district. The petitions must be filed by the first day for qualifying [§99.095(4)] which is the sixty-third day before the first primary, §99.061(1) Florida Statutes.

The statute makes no distinction between a candidate running for nomination in a multi-member district and a single-member district.

Each registered elector may sign as many nominating petitions as he desires. There is no provision that a petition signature will be disregarded because the elector has signed another petition supporting another candidate for nomination to the same office. Further, an elector registered in one political party may after the close of the petitioning period switch party

registration and vote in the primary of another party, § 97.111, Florida Statutes. 16a.

2. The Filing Fee and Party Assessment.

The qualifying fee consists of a filing fee and party assessment. The filing fee is three percent of the annual salary of the office sought. The candidate must also pay to the political party directly or through the qualifying officer the party assessment which is two percent of the [1] annual salary. Section 99.092(1), 16a. Of the three percent filing fee the state collects, eighty-five percent of this is given to the political party "for the purpose of meeting its expenses." Section 99.103(1) and (2), 22a. The parties do not finance the primaries and resulting 91 percent of the five percent filing fee and party assessment finds its way into the hands of the political party unencumbered. Section 103.121(1)(g), Florida Statutes, 23a. The State retains the balance for the general revenues of the state.

For Bush and Einstein running for state house of representative seats, the annual salary being twelve thousand dollars, they needed to file six hundred dollars, only fifty-four dollars being retained by the state.

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1. The executive committee of a party may reduce the party assessment but this as a matter of experience is not done. See, Adams v. Askew, 511 F.2d 700, 705, n.9 (5th Cir. 1975).

B. The Facts

Whether a candidate seeking ballot position by petition has garnered enough signatures is determined by the number of registered party electors as of the last general election. As of the 1972 general election there were 64,663 registered Democrats in districts 53-56,[1] the district in which Bush ran. Five percent of this figure is 3,233.[2] In districts 57-61 where Einstein

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1. For ballot position the candidates select one district number when they qualify. In Einstein's case he selected district 58. However, voters from the area apportioned as districts 57-61 vote for all five positions.

2. When Bush ran in 1972 the candidates were operating under the order of the district court which required petition signatures equal to one percent of the population of the district with a ceiling of 3,000 signatures for less than statewide office. Since house seats are apportioned on population units of approximately 62,000, Bush running in a four member district would have needed approximately 2,480 signatures. He was not a candidate in 1974 and the figure in the text is for illustration of the statute's operation.

ran in 1974, there were 85,926 registered Democrats, five percent of which is 4,296. Einstein after qualifying by raising the fee was unopposed in the primary and lost the general election by a vote of approximately 46,000 to 34,000. In his campaign he expended approximately twenty-five hundred dollars, including the six hundred dollar filing fee. Under political party qualifying rules, Einstein attempted to qualify as a candidate for delegate to the 1974 Democratic National Convention. In a ten day period he gathered approximately 750 petition signatures, 480 of which were declared valid.

Secretary of State Dorothy W. Glisson submitted an affidavit (State's exhibit 1) stating that in 1974 no candidate filed an oath of inability to pay with her, the oath being a precondition to receiving petition forms and soliciting signatures. All state and federal candidates[1] qualify with the secretary of state while county office candidates qualify with the clerks of circuit courts. Therefore in the first and only year so far of operation of the statute the secretary of state concluded that no state candidate utilized the provisions of the new petition law.

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1. This includes governor, lieutenant governor, secretary of state, attorney general, state comptroller, state treasurer, commissioner of education, commissioner of agriculture, state senators, members of the house of representatives, supreme court justices, circuit judges, state attorneys and United States Senate and House members. Section 99.061(1) and (2). 15a.

She also received petitions from three local candidates but these three fell short of having the requisite number of signatures,[1] so no candidate successfully utilized the new statute.

The affidavit from the secretary of state also recited that nine candidates attempted to qualify as independents by petition for state office and six were successful at getting on the ballot. One minority party qualified similarly and nominated five candidates. Independent candidates and minority parties have a deadline for submitting their petitions but there is no fixed starting date for gathering signatures. See §§ 99.152, 99.153 and 101.261, Florida Statutes.

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1. Local candidates file their oaths and later their petitions with local officials. The signatures are checked for validity and then forwarded to the secretary of state for the determination of whether enough signatures have been gathered. § 99.095(4). So while the secretary of state did not have a record of the number of candidates who started the petition process, her records reflect that only three filed petitions and none were successful.

THE QUESTIONS ARE SUBSTANTIAL

I. IMPOSING A 21-DAY TIME LIMIT FOR GATHERING PETITION SIGNATURES VIOLATES THE FIRST AND FOURTEENTH AMENDMENTS WHERE THE STARTING DATE IS UNRELATED TO ANY OTHER PART OF THE ELECTORAL SYSTEM.

This Court vacated and remanded the prior judgment of the district court for further consideration in light of the three filing fee/petition cases decided on March 26, 1974. Florida's statutory response to those decisions and the prior judgment of the district court was to impose even harsher restrictions on ballot access than those ordered by the district court in 1972.

Appellants do not challenge the closing date for submitting petitions, but the beginning date has no connection, as the State conceded below,[1] with any other part of the election code and is not reasonably necessary to further any legitimate goal of the State.

The State advanced three justifications for the time limit, only one of which -- that it assures that the petitions reflect current support -- has even superficial merit.[2] This justification might pass the

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1. Brief of Dorothy W. Glisson, etc., et al., filed December 9, 1974; transcript of November 26, 1974, pp. 12-16. Compare, Storer v. Brown, 415 U.S. at 741.

2. The State argued that the candi- [footnote continued on following page]

rationality test when viewed in isolation, but it fails when considered against the balance of the election code.

Independents may gather petition signatures for an unlimited time up to 35 days prior to the first primary. Further, an elector may sign any number of petitions for the same nomination within his party and may sign petitions for independents.[1]

The district court found the 21 day petition period not unconstitutionally burdensome. Storer v. Brown, 415 U.S. 742, held that past experience would be helpful in considering and assessing the impact of the statute. The district court

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[footnote continued from preceding page]
date could use the preceding months to examine his financial resources and thus the State insures that only truly impecunious candidates will use the petition process. This is a non sequitur. The State sought to concentrate all qualifying activity during one period for administrative purposes, a factor which goes to the filing of petitions but not to the gathering of petition signatures. Also, since independents may file their petitions at any time up to 35 days before the first primary, §§ 99.152 and 99.153, the argument lacks merit.

1. Raiding is not forestalled since party registration may be changed up to 30 days prior to the first primary. Compare, Kusper v. Pontikes, 414 U.S. 51 (1973); Rosario v. Rockefeller, 410 U.S. 752 (1973).

sought to apply this language and concluded "that in the context of Florida politics, a reasonably diligent candidate could be expected to satisfy the signature requirements. . . ." 9a. And further, that the process serves a legitimate state interest. Ibid. The only context the court had to evaluate was the general election of 1974, where for all the state, local and federal offices filled in that election no candidate qualified by petition for the partisan primaries.

This case, like Storer v. Brown, was remanded for the district court to make evaluations in light of state politics. This Court should note jurisdiction to determine whether the district court properly applied the guidelines of the March 26, 1974, trilogy, or whether on the record shown it drew conclusions unjustified under this Court's language.

II. REQUIRING A CANDIDATE TO GATHER MORE PETITION SIGNATURES BECAUSE THE STATE HAS CHOSEN SOME MULTI-MEMBER DISTRICTS DENIES THE EQUAL PROTECTION OF THE LAWS.

Bush and Einstein ran, respectively, in four and five member house districts. Solely by virtue of the apportionment scheme, they were therefore required to gather signatures in numbers four and five times higher than if they ran in single-member districts.[1] Florida has

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1. There is no challenge here to the use of multi-member districts. Fortson v.
[footnote continued on following page]

demonstrated an overwhelming favoritism for multi-member seats in setting up its state legislative districts.[1] The State has abandoned its interest in preventing laundry list ballots, choosing instead to have electors select up to six candidates instead of one. After this choice, the State cannot be heard to argue that the ballot is getting too long and so require the multiple signatures to keep the ballot shorter.

The multiple signature requirement tests seriousness only as the ability to win. But this is not the only aspect of seriousness,[2] and as Storer v. Brown, 415 U.S. at 743, noted, it is a factual matter whether or not a particular number of signatures is related to a candidate's ability to win. Our system's hospitality toward

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[footnote continued from preceding page] Dorsey, 379 U.S. 433 (1965); Dallas County, Alabama v. Reese, ___ U.S. ___, 95 S. Ct. 1706 (1975).

1. Of 120 house of representative seats, only 21 are single member. There are five six-member seats, six five-member seats, five four-member seats, three three-member seats, and five two-member seats. § 10.06, Florida Statutes. The state senate of 40 members has only five single-member seats. § 10.05, Florida Statutes.

2. Harper v. Vance, 342 F. Supp. 136, 143 (N.D. Ala. 1972), held that a candidate may be deemed serious even though he enters the race only to influence the thinking of the front-running candidate.

impecunious candidates has as a part thereof that a "voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues." Lubin v. Panish, 415 U.S. at 716.

The State has chosen multi-member districts and permits qualifying by fees (a method that has the effect of permitting non-serious candidates on so long as they pay the fee), and has runoff elections to assure the nominee has majority support. §§ 100.061 and 100.091, Florida Statutes. These may support legitimate State interests, but the burden of keeping the ballot short, having only serious candidates, and avoiding runoffs is primarily placed on impecunious candidates. This was prohibited by Bullock v. Carter, 405 U.S. 134 (1972).

The "close scrutiny" test, requiring that election laws restricting candidacies must be "found reasonably necessary to the accomplishment of legitimate state objectives," Bullock v. Carter, 405 U.S. 134, 144 (1972), has as its corollary that the measures, alone or in combination, must be "reasonably taken in pursuit of vital state objectives that cannot be served equally well in significantly less burdensome ways." American Party of Texas v. White, 415 U.S. at 781.

Appellants never contended the impossibility of meeting the requirements, only that they are clearly burdensome and unnecessarily so. They do not allege denial of access to the ballot, only the denial of equal protection since they were subjected to a far heavier burden than candidates running in single-member districts, a burden serving no legitimate purpose.

Jurisdiction should be noted to settle the question, after Dallas County, Alabama v. Reese, ___ U.S. ___, 95 S. Ct. 1706 (1975), whether a state using some multi-member districts may legitimately impose multiple petition requirements on candidates running in those districts.

III. THE REQUIREMENT OF A FILING FEE, 91% OF WHICH IS REMITTED TO THE POLITICAL PARTY, UNNECESSARILY RESTRICTS CANDIDACIES IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS.

The district court's reasoning on plaintiffs' contention regarding the filing fee system which remits 91% of the amounts collected to the political party was not elucidated. It stated that the contention had already been determined in its prior opinion and in Adams v. Askew, 511 F.2d 700 (5th Cir. 1975). The courts in considering Florida's statutes have held the collection of the fee to be a rational means of furthering the State's interests in regulating the size of the ballot, avoiding voter confusion and clogging of election machinery, assuring that the winner has majority support while avoiding runoff elections, limiting the ballot to serious candidates and defraying expenses. Compare, Bullock v. Carter, 405 U.S. at 147; Lubin v. Panish, 415 U.S. at 712.

As opposed to the situation in Bullock, Florida does not have even the rational basis of using the fees to finance the primaries for that part of the fee above the

nine percent retained by the State.[1] Whatever legitimate purposes served by the collection of the six hundred dollar fee from Bush and Einstein, it cannot be said that these state objectives "cannot be served equally well in significantly less burdensome ways." American Party of Texas v. White, 415 U.S. at 781. An easily available less burdensome method serving the same purposes as the six hundred dollar filing fee is to require through existing campaign finance disclosure laws that the candidate expend a minimum of six hundred dollars on the campaign.

While it has been argued that a candidate's willingness to pay a filing fee may be a measure of his seriousness, Harper v. Vance, 342 F. Supp. 136, 143 (N.D. Ala. 1972)(three-judge court), an argument undercut by this Court's judicial notice in Lubin v. Panish of "walking tour" candidates, appellants make the same argument as was made in Stoner v. Fortson, 359 F. Supp. 579 (N.D. Ga. 1972)(three-judge court), that while a candidate might be able to raise the filing fee, he could better spend the money otherwise in his campaign. This situation is highlighted here where appellant Einstein received 42% of the vote in the general election where nearly one-fourth of his campaign expenditures went to paying the filing fee.

All legitimate goals of the State served by the filing fee could be served

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1. Whatever minimal expenses the parties might incur, the benefit of fees has been termed incidental in Spillars v. Slaughter, 325 F. Supp. 550, 553 (M.D. Fla. 1971).

equally as well by permitting the candidate to expend the 91% of the fee on his campaign rather than turning it over to the political party.

CONCLUSION

For the reasons set forth above, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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ATTORNEYS FOR APPELLANTS

THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION

JIM FAIR, *
Plaintiff, *
v. * No. 72-296 Civ.T-K
J. F. TAYLOR, et al., *
Defendants. *
*

CHARLES MIRANDA, *
Plaintiff, *
v. * No. 72-299 Civ. T-K
JAMES A. SEBESTA, et al., *
Defendants. *
*

JUNE HARTWICK, et al., *
Plaintiffs, *
v. * No. 72-341 Civ. T-K
RICHARD STONE, et al., *
Defendants. *
*

WILLIAM S. MULLON, et al., *

Plaintiffs, *

v. * No. 72-187 Civ.Orl.

RICHARD STONE, etc., *

Defendant. *

*

JIM FAIR, *

Plaintiff, *

v. * No. 74-316 Civ. T-K

JIM TAYLOR, et al., *

Defendants. *

*

Before RONEY, Circuit Judge, KRENTZMAN and HODGES District Judges.

These consolidated cases were initially considered by this Court in 1972. The issue raised in each case involved the constitutionality of those sections of Florida's election law which required the payment of a filing or qualification fee as a precondition to the qualification of a candidate for public office. The Court held that the Florida filing fees, uniformly applied, were reasonable in amount and constituted a valid means for the state to achieve its legitimate goal of controlling the ballot.

In view of Bullock v. Carter, 405 U.S. 134 (1971), however, the Court also held that the state must provide an alternate method of securing a ballot position that does not involve the payment of a substantial sum of money as a filing fee. Considering the imminence of the 1972 election, the Court provided an alternate method in an order dated July 11, 1972.

The method devised provided that candidates for statewide office secure the signatures of 10,000 registered voters. Candidates for office to be elected on less than a statewide basis would have to obtain the signatures of a number of registered electors of the district or county represented by the office sought equal to one percent of the population of such district or county, but not less than 100 nor more than 3,000 signatures.

Plaintiffs appealed to the Supreme Court. On April 15, 1972 [sic, 1974], the Supreme Court vacated the judgment and remanded the case for further consideration in light of three cases decided by that Court on March 26, 1974: Storer v. Brown, 94 S.Ct. 1274; American Party of Texas v. White, 94 S.Ct. 1296 and Lubin v. Panish, 94 S.Ct. 1315. By coincidence of timing the Florida legislature passed a new election code soon after the remand. Laws of Florida, Chap. 74-119. The new law, effective May 31, 1974, amends those sections of the prior code pertaining to filing or qualification fees and, among other things, establishes an alternative means of qualifying through the petitioning process.

Plaintiff Jim Fair immediately filed a

complaint, No. 74-316 Civ. T-K, attacking the new statute. The new Fair complaint was then consolidated with all the other cases.

Because of these developments a hearing was held before this Court on June 17, 1974, to discuss the status of the case. By order dated June 18, 1974, the Court held that, based upon what had transpired, the claims asserted in the 1972 cases had been rendered moot. Instead of dismissing the cases, however, the Court held that in view of the circumstances of the action, the cases should not be terminated until the plaintiffs had been given the opportunity to file and serve supplemental pleadings. The parties were given the opportunity with the caveat that if no supplemental complaints were filed, the cases would stand dismissed.

Three of the original plaintiffs, Richard Bush (intervenor in No. 72-299 Civ. T-K), Roy Girod (plaintiff in No. 72-187 Civ. Orl.), and James Fair (plaintiff in No. 72-296 Civ. T-K) filed the supplemental materials. Fair's other suit, No. 74-316 Civ. T-K, was not consolidated with these cases until June 26, 1974, after the June 18 order, and therefore, no supplemental pleading was required to be filed therein. Since the plaintiffs in case No. 72-341 Civ. T-K filed no supplemental complaint in response to the June 18 order, this case should be, and it is hereby, DISMISSED. Examining the complaints and supplementary pleadings in the other cases, the Court is of the opinion that whatever claims are made therein against the old election law are moot and are hereby DISMISSED. The only viable claims are those which address the new Florida Election Code.

On November 26, 1974, Fair filed a "Motion to Enlarge Complaint" in the consolidated cases. This motion, served after the hearing was held on the merits of these cases and after the submission of the cases to the Court for decision, attempts to interject totally new issues into the cases. Under such a circumstance, we consider the motion untimely. Treating it as a motion to amend a complaint under Rule 15(a), F.R.Civ.P., the Court, in its discretion, hereby denies the motion.

THE NEW LAW

Although filing fees are still utilized under the new election code, an alternate method for gaining access to the ballot has been created. Under the system both party and independent candidates may qualify for a place on the ballot by submitting signature petitions. After filing an oath that states their inability to pay the statutory fees, the candidates are furnished with petition forms by an election officer.

A candidate seeking an office elected on a statewide basis wishing to get on the ballot for the party primary must obtain the signatures of a number of qualified electors equal to at least 5% of the total number of registered electors who are registered in the party to which he seeks nomination, as shown by the compilation by the State Department for the most recent general election. If the candidate is seeking less than statewide office, he must obtain 5% of the total registered party members in the district or county on [sic] which he seeks office. The process must be completed within a twenty-one day period.

Independent candidates for statewide office must provide a petition requesting that he be assigned a position on the general election ballot signed by 5% of the registered electors of Florida as shown by the compilation for the last general election. The petitions must be submitted no later than thirty-five days prior to the first primary preceding the general election.

Independent candidates for an office elected on less than a statewide basis must submit signatures amounting to 5% of the registered electors in the district or county within which he seeks office.

In Lubin v. Panish, 94 S.Ct. 1315 (1974), the Supreme Court held that selection of candidates solely on the basis of their ability to pay a fixed fee without providing any alternate means is not reasonably necessary to the accomplishment of the State's legitimate election interests:

> Accordingly we hold that in the absence of reasonable alternative means of ballot access, a State may not, consistent with constitutional standards, require from an indigent candidate filing fees he cannot pay.

The Court had the opportunity to examine the reasonableness of an alternative petitioning process in Storer v. Brown, 94 S.Ct. 1274 (1974). In Storer the Court examined a California law which required an independent candidate to submit petitions signed by no less than 5% of the entire vote cast in the preceding general election. All the signatures had to be collected during a 24 day period following the primary and ending

sixty days before the general election. The California law also provided that none of the signatures could be gathered from persons who vote at the primary election.

When the Supreme Court analyzed the California Act they found that although the 5% was applied to the total number of votes cast (totalling 325,000 signatures), the pool from which the signatures were to be drawn was substantially reduced due to the elimination of those who had voted in the primary. Therefore, the candidates actually needed a much higher percentage of signatures from the pool than 5%. In reality the percentage of signatures needed from the pool of potential signers exceeded 8%.

Instead of making a consititutional determination, the Storer Court sent the case back with instructions to the District Court to determine whether the available pool is so diminished in size by the disqualification of those who voted in the primary that the 325,000 signature requirement is too great a burden to be satisfied within 24 days. The Court indicated that on its face the task of gathering 325,000 signatures in 24 days did not appear impossible. It was noted that 1,000 canvassers could accomplish the task by procuring 14 signatures per day each. The Supreme Court sent the case back with a test for determining the reasonableness of the signature requirement:

> In the context of [state] politics, could a reasonably diligent [candidate] be expected to satisfy the signature requirements, or will it be only rarely that the [can-

didate] will succeed in getting on the ballot?

In the instance [sic] case plaintiffs Bush and Einstein both sought the office of state representative and both sought to get on the Democratic primary ballot. To accomplish that goal would require, according to plaintiffs' figures, 3,233 signatures on petitions in support of Bush and 4,296 signatures on petitions in support of Einstein.

Plaintiff Girod wanted to be a candidate for the U.S. Congressional District Nine seat. To secure a ballot position without paying the filing fee Girod would need petitions with 6,417 signatures.

The total number of Florida registered voters in the last election were not submitted to the Court. Plaintiff Bush, however, submitted figures on total registered Democrats in the 1972 election. These figures reveal that a Democratic candidate seeking a statewide office would need 115,000 signatures to get on the ballot by the petition method. This figure would amount to approximately 5,477 signatures per day. Using the Supreme Court's 1,000-canvasser example, the candidate would require 5-6 signatures per day from each canvasser.

The Court is of the opinion that none of these signature requirements, whether imposed in a single or multi-member district, is unconstitutionally burdensome. Although plaintiffs prefer a longer period in which to gether [sic] the required signatures, the Florida legislature's choice of twenty-one days is not legally defective. Applying

the Storer test, this Court holds that in the context of Florida politics, a reasonably diligent candidate could be expected to satisfy the signature requirements of the Florida Election Code. The procedure developed by the Florida legislature serves a legitimate state interest.

The remaining questions regarding the constitutionality of the filing fees and the disposition thereof have already been addressed and ruled upon by this Court and the Court in Adams v. Askew, 511 F.2d 700 (5th Cir. 1975).

These consolidated cases should be, and they are hereby, DISMISSED.

DATED this 2nd day of June, 1975.

s/PAUL H. RONEY
Paul H. Roney, Circuit Judge

s/BEN KRENTZMAN
Ben Krentzman, District Judge

s/WM. TERRELL HODGES
Wm.Terrell Hodges, District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JIM FAIR, individually and as representative of similarly situated residents of the State of Florida,

Plaintiff,

vs. No. 72-296-Civ-T-K

J. F. TAYLOR, as Clerk of the Circuit Court of Hillsborough County, Florida, and the STATE OF FLORIDA,

Defendants.

CHARLES MIRANDA, Individually,

Plaintiff,

vs. No. 72-299-Civ-T-K

JAMES A. SEBESTA, as Supervisor of Elections of Hillsborough County, Florida, REUBEN O'D ASKEW, as Governor of the State of Florida, JAMES TAYLOR, as Clerk of the Circuit Court of Hillsborough County, Florida, RICHARD STONE, as Secretary of State of Florida, and their successors in each office,

Defendants.

JUNE HARTWICK, NORMAN KIRK, JR. and JAMES V. DOLAN,

Plaintiffs,

v. No. 72-341-Civ-T-K

RICHARD STONE, as Secretary of State of the State of Florida and as Comissioner of Elections, REUBEN ASKEW, as Governor of the State of Florida, ROBERT SHEVIN, as Attorney General of Florida, and JOHN MOYLE, as Chairman of the Democratic Party of Florida,

Defendants.

WILLIAM S. MULLON, ROY GIROD, WILLIAM H. ROUNDTREE AND HERB GILLIS,

Plaintiffs,

vs. No. 72-187-Civ. Orl.

RICHARD STONE, as Secretary of State of the State of Florida,

Defendant.

Before: RONEY, Circuit Judge, KRENTZMAN and HODGES, District Judges.

ORDER

BY THE COURT:

These consolidated cases were initially considered by this 3-Judge Court in July 1972. The issue raised in each case involved the constitutionality of those sections of Florida's election law which required the payment of a filing or qualifying fee as a precondition to the qualification of a candidate for public office and the appearance of his name on the official ballot. See Fla. Stat. 99.061, 99.092 and 105.031 (1972).

We held that the Florida filing fees, uniformly applied, were reasonable in amount and constituted a valid means for the State to achieve its legitimate goal of controlling the ballot. However, in view of Bullock vs. Carter, 405 U.S. 134, 92 S.Ct. 849 (1971), we also held that the State must provide an alternate method of obtaining a place on the ballot that does not involve the payment of a substantial sum of money as a filing or qualifying fee. Thus, in view of the imminence of the 1972 election at the time of our decision, we entered an order dated July 11, 1972, providing for an alternative method to the payment of the fee ". . . that would serve the purpose of the Plaintiffs and others similarly situated until the Florida Legislature has had an opportunity to determine an alternative that meets constitutional standards." See Fair vs. Taylor, 359 F. Supp. 304, 306 (M.D. Fla. 1973). The Plaintiffs thereafter instituted an appeal to the Supreme Court of the United States. On March 26, 1974, while the instant cases were pending before the Supreme Court, that Court rendered its decisions in Storer vs. Brown, 415 U.S. ____, 94 S.Ct. 1274; American Party of Texas vs. White, 415 U.S. ____, 94 S.Ct. 1296; and Lubin vs. Panish, 415

U.S. ____, 94 S.Ct. 1315 (1974). In that trilogy of opinions the Supreme Court addressed itself to a variety of issues involving access to the ballot. Accordingly, by order entered on April 15, 1974, the Supreme Court remanded the instant cases to this Court for further consideration in the light of those decisions of March 26. See Bush vs. Sebesta, and Fair vs. Taylor, ____U.S. ____, 94 S.Ct. 1916 (1974).

In the meantime, however, following close upon the heels of the order of the Supreme Court remanding these cases to this Court, the Florida Legislature enacted a new statute (designated as Committee Substitute for House Bill 1936) which became effective on May 31, 1974. The new statute amends those sections of the Florida Elections Code pertaining to filing or qualifying fees and, among other things, establishes an alternative means of qualifying through a petitioning process.

In view of these developments, Judge Krentzman (as the convening District Judge) entered an order on June 11, 1974, scheduling a status of case hearing before the 3-Judge Court on Monday, June 17, 1974, for the purpose of exploring with the parties ". . . the current status and future progress of the matters before the Court . . ." Having considered the memoranda filed by counsel as well as the views and positions expressed by them during the course of that hearing, it is the opinion of the Court that the claims asserted in these cases have now been rendered moot by the holding of the 1972 elections, and more importantly, by the recent amendment of the statutes which constituted the subject matter of the claims and the decision of this Court. Nevertheless, in view of the unusual circumstances presented

by the history of these cases, the Court is also of the view that the same should not be dismissed at least until such time as the Plaintiffs have been given an opportunity to file and serve supplemental amendments to their complaints, if they so desire, pursuant to Rule 15(d), Federal Rules of Civil Procedure. It is, therefore,

ORDERED AND ADJUDGED:

1. That the Plaintiffs in these consolidated cases shall have fifteen (15) days from the date of this order within which to file and serve a supplemental amendment to their complaints if they so desire.

2. That the Defendants shall have fifteen (15) days after the date of service upon them of such supplemental amendments, if any, within which to file their answer or answers thereto.

3. That in the event no supplemental amendment is filed by the Plaintiffs or any of them as herein provided, these cases shall stand and be taken as dismissed without prejudice.

DONE and ORDERED at Tampa, Florida, this 18th day of June, 1974.

s/PAUL H. RONEY
UNITED STATES CIRCUIT JUDGE

s/BEN KRENTZMAN
UNITED STATES CIRCUIT JUDGE

s/WM. TERRELL HODGES
UNITED STATES DISTRICT JUDGE

FLORIDA STATUTES

99.061 Nomination of candidates for state, county and United States offices; sworn statement, receipt and filing fee

(1) Candidates for nomination of any recognized political party for state offices of secretary of state, attorney general, state comptroller, state treasurer, commissioner of education, commissioner of agriculture, state senator, member of the house of representatives, supreme court justice, circuit judge, state attorney and candidates for the offices of representatives to congress and United States senate are required to file their qualification papers and pay the qualification fees and party assessment, if any has been levied, to the department of state at any time after noon of the first filing date, which shall be the sixty-third day prior to the first primary, but not later than noon of the forty-ninth day prior to the date of the first primary in the year in which any primary is held.

(2) Candidates for nomination of any recognized political party for the office of governor and lieutenant governor and all other candidates for state offices are required to file their qualification papers and pay their qualification fees and party assessment to the department of state at any time after noon of the first filing date, which shall be the sixty-third day prior to the first primary, but not later than noon of the forty-ninth day prior to the date of the first primary in the year in which any primary is held.

. . .

97.111 How persons may register change of party affiliation

Any person who has registered, and desires to change his party affiliation may at any time after a general election and thirty days before the next succeeding primary election, when the registration books are open in the main office or in any temporary or permanent branch office and at no other time, change his party party affiliation. The person shall surrender his certificate of registration or card, or make a sworn affidavit if his certificate or card is lost, to the supervisor, at which time the supervisor shall cancel his prior registration and issue the person a new certificate and card. All cancellations are retained on file by the supervisor.

99.092 Filing fee of candidate; notification of department of state

(1) Each candidate for nomination for any office except those candidates described in section 99.095, Florida Statutes, is required to pay a filing fee to the officer with whom he qualified and attach the original or signed duplicate of the receipt for his party assessment or pay the same, in accordance with the provisions of § 103.121, at the time of filing the sworn statement. The amount of the filing fee is three percent (3%) of the annual salary of the office. The amount of the committee assessment is two per cent of the annual salary unless made less by the executive committee, but in the case of state or legislative offices it shall not be less than one hundred twenty dollars. No qualifying fees shall be returned to the candidate unless he withdraws his candidacy before the last date to qualify.

(2) Upon filing of the party assessment and the filing fee, the clerk of the circuit court shall immediately after the close of qualifying date submit to the department of state a list containing the names, party affiliation and addresses of all candidates and the office for which they qualified.

(3) Each candidate for the office of governor and the office of lieutenant governor shall pay a separate fee for his office in accordance with this section.

99.095 Alternative method of qualifying

(1) A candidate for nomination for any office who is unable to pay the filing fee and party assessment prescribed by section 99.092, Florida Statutes, without imposing an undue burden on his personal resources or on resources otherwise available to him may have his name placed on the ballot for the first primary election by means of the petitioning process prescribed in this subsection. A candidate availing himself of this petitioning process shall file an oath with the officer before whom the candidate would qualify for the office, stating that he intends to qualify for the office sought and stating that he is unable to pay the filing fee and party assessment for that office without imposing an undue burden on his personal resources or on resources otherwise available to him. Such oath shall be filed at any time after noon of the eighty-fourth day prior to the first primary but no later than noon of the sixty-third day prior to the first primary. The department of state shall prescribe the form to be used in administering and filing such oath. No signatures shall be obtained by a candidate on any nominating petition until he has filed the oath prescribed herein.

(2) Upon receipt of a written oath from a candidate, the qualifying officer shall provide the candidate with petition forms in sufficient numbers to facilitate the gathering of signatures pursuant to this section and shall affix the date of issuance on each form. Such forms shall be prescribed by the department of state. A name on a petition which is not in the exact form as a name on the voter registration books shall be counted as

a valid signature for purposes of subsection (3) of this section if, after comparing the signature on the petition with the signature of the alleged signer as shown on the registration books, the supervisor of elections determines that the person signing the petition and the person registering to vote are one and the same. No signature shall be counted toward the number of signatures required by subsection (3) unless it is on a petition form prescribed pursuant to this subsection.

(3) When a candidate has filed the oath prescribed in subsection (1), he may begin to seek signatures on petitions supporting his candidacy. Only signatures of those electors registered in the political party by which the candidate seeks to be nominated and who are registered to vote in the county, district, or other geographical entity represented by the office sought shall be counted toward obtaining a minimum numbers of signatures prescribed in this subsection. A candidate for an office elected on a statewide basis shall obtain the signatures of a number of qualified electors equal to at least five percent (5%) of the total number of registered electors of Florida who are registered in the party to which he seeks nomination, as shown by the compilation by department of state for the most recent general election. A candidate for any federal, state, or county office to be elected on less than a statewide basis shall obtain the signatures of a number of qualified electors of the district or county equal to at least five percent (5%) of the total number of registered voters of the party by which he seeks nomination that are registered within the district, county, or other geographical entity

represented by the office sought, as shown by the compilation by the department of state for the most recent general election. A separate petition shall be circulated for each candidate availing himself of the provisions of this section; provided, candidates for the offices of governor and lieutenant governor forming joint candidacies shall use the same nominating petition for both candidates.

(4) Candidates for nomination to statewide or other multi-county offices shall file separate petitions from each county from which signatures are sought. Each petition shall be submitted to the supervisor of elections of the county in which such petition is circulated not later than the first date for qualifying for office. Each supervisor of elections to whom a petition is submitted shall check the names of the persons on the petition to verify their status as electors of the political party by which the candidate seeks nomination and of that county and of the district or other geographical unit represented by the office being sought by the candidate. No later than the last date for qualifying, the supervisor shall certify that number shown as registered electors of such county and district or other geographical unit and of the appropriate political party and submit such certification to the department of state. The department of state shall determine whether the required number of signatures have been obtained for the name of the candidate to be placed on the ballot and shall notify the candidate and the board of county commissioners of the appropriate county or counties that the candidate's name is to be placed on the ballot. When a candidate is so notified, he shall immediately submit a

copy of such notice and the qualifying oath prescribed by section 99.021, Florida Statutes, to the officer with whom he qualifies pursuant to section 99.061, Florida Statutes. Upon receipt of such notice and qualifying papers, the qualifying officer shall certify the name of the candidate to the appropriate board or boards of county commissioners as having qualified for the office sought.

. . .

99.103 Department of state to remit part of filing fees and party assessments of candidates to state executive committee.

(1) If more than three-fourths of the full authorized membership of the state executive committee of any party was elected at the last previous election for such members and if such party shall be declared by the department of state to have recorded on the registration books of the counties, as of the eighty-fourth day prior to the first primary in general election years, five percent of the total registration of such counties when added together, such committee shall receive, for the purpose of meeting its expenses, all filing fees collected by the department of state from its candidates less an amount equal to fifteen percent of the filing fees, which amount the department of state shall deposit in the general revenue fund of the state.

(2) Not later than thirty days prior to the first primary in even-numbered years, the department of state shall remit all filing fees, less the amount deposited in general revenue pursuant to subsection (1), or party assessments that may have been collected by it to the respective state executive committees of the parties complying with subsection (1). Party assessments collected by the department of state shall be remitted to the appropriate state executive committee, irrespective of other requirements of this section, provided such committee is duly organized under the provisions of § 103.111.

103.121 Powers and duties of executive committees.

(1) The State and County executive committees shall have the following powers and duties:

* * * * * * * * * * * * *

(g) To make assessment it requires of candidates, for the purpose of meeting its expenses or maintaining its party organization, not later than twenty calendar days before the last filing date for state offices of each year in which a general election is held. No executive committee shall levy assessments to exceed two percent of the annual salary of the office sought by any candidate. Within five days after adoption the state executive committee shall deliver a certified copy of its assessment resolution to the department of state; the county executive committee shall deliver a certified copy of its assessment resolution to the clerk of the board of county commissioners. The certified copies shall be filed by the department of state and the board of county commissioners. The county executive committee shall have exclusive power to levy and receive payment of assessments upon candidates to be voted for in a single county except state senators and members of the house of representatives and representatives to the congress of the United States, and the state executive committees shall have exclusive power to levy all other assessments authorized. Upon payment by a candidate of his filing fee and committee assessment he shall be entitled to a receipt from the officer with whom he qualified. If any executive committee shall fail to meet and levy party assessments before the expiration of the

last day for levying assessments in a year in which a general election is held, then such assessments shall be two percent.

. . .

THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION

[Caption Omitted]

NOTICE OF APPEAL

Notice is hereby given that the plaintiff-intervenors, Richard Bush and Michael Leslie Einstein (intervenors in No. 72-299, Civ. T-K of these consolidated cases)hereby appeal to the Supreme Court of the United States from the final order entered in this action on June 2, 1975.

This appeal is taken pursuant to 28 U.S.C. §1253.

Respectfully submitted,

s/Neil Bradley

Neil Bradley
Laughlin McDonald
Room 355
52 Fairlie Street, N.W.
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Filed: July 31, 1975

ATTORNEYS FOR PLAINTIFFS-INTERVENORS RICHARD BUSH AND MICHAEL LESLIE EINSTEIN

SUPREME COURT, U. S.
FILED
OCT 23 1975
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975
NO. 75-497

RICHARD BUSH and MICHAEL LESLIE EINSTEIN, individually and as representative of similarly situated residents of the State of Florida,

Appellants,

v.

JAMES A. SEBESTA, as Supervisor of Elections of Hillsborough County, Florida, REUBIN O'D. ASKEW, as Governor of the State of Florida, JAMES TAYLOR, as Clerk of the Circuit Court of Hillsborough County, Florida, DOROTHY W. GLISSON, as Secretary of State of the State of Florida, and their successors in each office,

Appellees.

On Appeal from the United States District Court for the Middle District of Florida.

MOTION TO AFFIRM (BUSH and EINSTEIN) MOTION TO DISMISS (FAIR), and BRIEF OF APPELLEES

ROBERT L. SHEVIN
ATTORNEY GENERAL

SYDNEY H. McKENZIE, III
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975
NO. 75-497

RICHARD BUSH and MICHAEL LESLIE EINSTEIN, individually and as representative of similarly situated residents of the State of Florida,

Appellants,

v.

JAMES A. SEBESTA, as Supervisor of Elections of Hillsborough County, Florida, REUBIN O'D. ASKEW, as Governor of the State of Florida, JAMES TAYLOR, as Clerk of the Circuit Court of Hillsborough County, Florida, DOROTHY W. GLISSON, as Secretary of State of the State of Florida, and their successors in each office,

Appellees.

On Appeal from the United States District Court for the Middle District of Florida

MOTION TO DISMISS (FAIR)

Appellees move to dismiss this appeal as to Appellant, Jim Fair, and as grounds therefor submit:

1. Final Judgment in this cause was entered below on June 2, 1975.

2. Appellant Fair filed Notice of Appeal on August 19, 1975.

3. Pursuant to 28 U.S.C. §2101(b), plaintiffs below had sixty days from the date final judgment was entered (June 2, 1975) in which to file notice of appeal.

4. Appellant Fair's Notice of Appeal was untimely and this Court lacks jurisdiction as to Appellant Fair.

MOTION TO AFFIRM (BUSH and EINSTEIN)

Appellees move to affirm the judgment of the lower court on the ground that, it is manifest that the questions raised on this appeal are so insubstantial as to require no futher argument.

BRIEF IN SUPPORT OF MOTION TO AFFIRM

ARGUMENT

I.

FLORIDA'S PETITIONING ALTERNATIVE FOR IMPECUNIOUS CANDIDATES, INCLUDING THE 21 DAY PERIOD FOR GATHERING SIGNATURES, CLEARLY MEETS THE REQUIREMENTS OF THE CONSTITUTION.

Like California's petitioning process for independent candidates (Storer v. Brown, 415 U.S. 724, 39 L.Ed.2d 714, 94 S.Ct. 1274 (1974)), Florida requires that impecunious candidates seeking to qualify by the petitioning alternative in lieu of paying a filing fee obtain signatures on their petitions during a specific period of time. Though Storer addressed the petitioning alternative provided for independent candidates, the issue is the same: whether Florida's 21 day limit for gathering signatures is too great a burden to pass constitutional muster considered in the total context of Florida's petitioning scheme.

Florida has several compelling interests for having the petitioning process occur within a 21 day period. First, to qualify for the petitioning alternative, a prospective candidate must be truly impecunious either because of lack of his own resources or because of the unavailability of other resources. Florida has a compelling interest to insure that a candidate first makes a reasonable effort to

raise funds. If that does not succeed, the candidate may then resort to the petitioning alternative. Of course, a candidate could elect to do nothing and make no attempt to raise funds in the earlier months before an election, but at least he has an incentive to first make a good faith effort to raise funds before utilizing the petitioning alternative. Also, as recognized on numerous occasions by this Court, a state such as Florida has a strong interest in having petitions indicate serious support. Support is not serious if signatures are old and stale. Having petitions signed in a three week period insures that the support is both real and current, and in this manner the petitioning alternative serves the same state interest as a filing fee.

When this Court remanded Storer, it commented:

> "Standing alone, gathering 325,00 signatures in 24 days [the California period was limited to 24 days] would not appear to be an impossible burden. Signatures at the rate of 13,820 per day would be required, but 1,000 canvassers could perform the task if each gathered 14 signers a day. On its face, the statute would not appear to require an impractical undertaking for one who desires to be a candidate for President." 39 L.Ed. at 729; 415 U.S. at 740.

Storer then asked:

> "If the required signatures approach 10% of the eligible pool

> of voters, is it necessary to serve the State's compelling interest in a manageable ballot to require that the task of signature gathering be crowded into 24 days?" (Emphasis supplied, footnote omitted.) 39 L.Ed.2d at 731.

Florida requires that persons seeking to qualify because unable to pay a filing fee obtain signatures on a petition equal in number to 5% of the voters registered in that party in the district as of the last general election. Unlike Storer, there is no "evaporation" of the pool of eligible signers since any currently registered voter in the district in the same party can sign. The court below found that a candidate seeking statewide office in Florida would need approximately 115,000 signatures or about 5,477 signatures per day during a 21 day period. Using the Storer canvasser example, a candidate would have needed only 5-6 signatures per day from each canvasser (or 10-12 signatures per day from 500 canvassers statewide).

Thus, even though contained within a 21 day period, the petitioning alternative provided by Florida is not unreasonable or impossibly burdensome. This is especially true when Florida's petitioning alternative is viewed in its totality, as this Court did in Jenness v. Fortson, 403 U.S. 431, 29 L.Ed. 2d 554, 91 S.Ct. 1970 (1971). Jenness reviewed Georgia's 5% petitioning alternative for independent candidates, and therein found that Georgia imposed "no suffocating restrictions whatever upon the free circulation of nominating petitions."

The Florida petitioning alternative for those unable to pay the filing fee is similarly unfettered, open and unrestricted; the only requirement is that signatures be obtained from voters registered in the same party. Otherwise, petition signers may sign as many petitions as they wish, need not state that he or she intends to vote for the petitioner, may sign the petition if currently registered even though not registered for the last election, and are not barred from signing because of voting or a failing to vote in the last election. Compare, American Party of Texas v. White, 415 U.S. 767, 39 L.Ed.2d 744, 94 S.Ct. 1296 (1974). The signature does not have to be notarized and in fact will be validated even if not in the same form as the registered name if a comparison evidences an identity of person. (Section 99.095(2), F.S.) Moreover, like Georgia in Jenness, Florida permits write-in candidates (Section 101.011, F.S.).

Florida's petitioning alternative with its 21 day limit is thus on its face free, unencumbered, and not impermissibly burdensome in keeping with Jenness and Storer. Of course, as this Court stated in Storer, Florida's past experience with the procedure "will be a helpful, if not always unerring guide." But at this date Florida has not had sufficient time to build any track record one way or the other. The Florida petitioning alternative became law in June, 1974, and has thus existed for only one General Election. The lack of petitions may indicate a lack of knowledge that the law exists as well as (as Appellant argues) an indicia that the process may be burdensome. Appellant points out that nine independent candidates sought to qualify in 1974 by petition and six were successful, as well as one minority party and its five

candidates. The petitioning success of these petitioners may well be attributable to the fact that independents and minority parties have been allowed to obtain ballot status by petition since 1970 (Chapter 70-269, Laws of Florida), and thus have had two prior general elections to exercise the new opportunity.

In sum, considered in its entirety, it is submitted that Florida's petitioning alternative (including the 21 day provision) is in no way unduly burdensome, serves compelling state interests, and provides real unencumbered alternatives for impecunious candidates. Appellants' arguments raise no substantial issues.

II.

TO ALLOW AN IMPECUNIOUS CANDIDATE FROM A MULTI-MEMBER DISTRICT TO QUALIFY BY OBTAINING A LESSER PERCENTAGE OF SIGNATURES FROM HIS OR HER CONSTITUENTS THAN REQUIRED OF A CANDIDATE FROM A SINGLE-MEMBER DISTRICT WOULD BE A DENIAL OF THE EQUAL PROTECTION OF THE LAWS TO THE SINGLE-MEMBER DISTRICT CANDIDATE.

Appellants' argument that indigent candidates from multi-member districts should be allowed to obtain a lesser number of signatures to satisfy the alternative method for qualifying is nothing more than an attack upon the concept per se of multi-member districts.

Surely the question of the validity of a multi-member district has been foreclosed by this Court. See Dallas County, Alabama v. Reese, _____U.S. _____, 44 L.Ed.2d 312,

95 S.Ct. ____(1975); Dusch v. Davis, 387 U.S. 112, 18 L.Ed.2d 656, 87 S.Ct. 1554 (1967); Fortson v. Dorsey, 379 U.S. 433, 13 L.Ed.2d 401, 85 S.Ct. 498 (1965).

If a multi-member district is permissible as a concept, it should follow that the direct and immediate consequences of such a district should also be valid. As this Court has noted on several occasions (See Dallas County, supra, 44 L.Ed.2d at 315), if the tenure of an official from a multi-member district ". . . depends upon a county-wide [or district-wide] electorate he must be vigilant to serve the interests of all people in his home district." As a corollary, during a campaign a candidate for a multi-member seat must persuade the voters of the entire district to vote for his or her candidacy. To reduce such a candidate's petitioning requirement by 400% or 500% as suggested by Appellants[1] would have the direct effect of diminishing by 400% or 500% the effectiveness of Florida's petitioning alternative as a means to identify serious, potentially successful candidates.

Where the Equal Protection Clause is concerned, "sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike . . . ." Jenness v. Fortson, 403 U. S. 431, 29 L.Ed.2d 554, 91 S.Ct. 1970 (1971). If an equal protection right exists, it lies with candidates for single member districts. Would it be not unfair for such impecunious candidates to be required to obtain signatures

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[1]Florida requires signatures from 5% of the registered electorate in the district in the same party. Appellant suggests this should be reduced to 1/4 or 1/5 of 5%.

from 5% of their available electorate, while allowing multi-member district candidates to qualify after obtaining only 1% or 1.25% of their available pool of signers?

Appellants show no tangible proof that an impecunious candidate from a multi-member district has a greater difficulty in qualifying by the petitioning method. Appellants' speculation is based solely upon the numbers of signatures required. But since one can as easily speculate that there is no extra burden because the pool of signers is proportionately larger in a multi-member district, Appellants' arguments fail for lack of evidence.

In short, Appellants have not shown in law or fact that Florida's petitioning alternative for multi-member districts is invalid.

III.

FLORIDA'S FILING FEE IS VALID IN ALL RESPECTS.

It is difficult to tell by Appellants' third argument whether Appellants contest the validity per se of a 5% filing fee, or whether Appellants attack Florida's ultimate disposition of the filing fee. The only Appellant with standing to raise these issues is Einstein. Bush contends an inability to pay any fee, and thus could be injured only if the petitioning alternative is in some manner insufficient. Einstein, on the other hand, is one who drew upon funds intended for educational and living expenses and paid the fee. In short, Einstein is one who is merely unwilling, not unable to pay. Compare, Bullock v. Carter,

405 U.S. 134, 146, 31 L.Ed.2d 92, 101, 92 S.Ct. 849 (1972).

Florida's filing fee of 5% of the annual salary of the office sought has been sustained by numerous courts below: Adams v. Askew, 511 F.2d 700 (5th Cir. 1975); Fair v. Taylor, 359 F.Supp. 304 (M.D. Fla. 1973) (the case sub judice); Spillers v. Slaughter[2], 325 F.Supp. 550 (M.D. Fla. 1971); Fowler v. Adams, 315 F.Supp. 592 (M.D. Fla. 1970), appeal dism'd, 400 U.S. 986, 27 L.Ed.2d 436, 91 S.Ct. 477; Wetherington v. Adams, 309 F.Supp. 318 (N.D. Fla. 1970); Differenderfer v. Homer, (No. 68-455-Civ-Ec., S.D. Fla. 1968); Bodner v. Gray, 129 So.2d 419 (Fla. 1961). Florida's filing fee serves multiple state interests that are

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[2]Spillers is misquoted by Appellant. Footnote 1, part III, of Appellants' brief states: "whatever minimal expenses the parties might incur, the benefit of fees has been termed incidental in Spillers v. Slaughter . . . ." The correct quote from Spillers (after the court mentioned the usual state interests in requiring filing fees) is:

> "Moreover, the fact that the fee operates incidentally to defer party expenses in conducting the primary and to provide campaign funds for the nominee in the general election does not render the fee concept invalid."
> 325 F.Supp. at 553.

clear and substantial. The filing fee focuses the election process on serious candidates, and thereby trims the size of the ballot, precludes voter confusion, assures that voting machines can work effectively, avoids run-off elections, and defrays expenses. Adams v. Askew, supra, 511 F.2d at 704; Lubin v. Panish, 415 U.S. 709, 712-13, 39 L.Ed.2d 702, 706-7, 94 S.Ct. 1315 (1974). Defraying election expenses is only one of several state interests.

Of course, a filing fee system is not perfect; a wealthy person without serious intent or support can become a candidate. But the same can be said of the petitioning system. An impecunious candidate with a small but loyal following can achieve ballot status by the petitioning process even though his or her candidacy has no chance of success. The point is that Florida has provided an alternative system open to all on equal terms. Appellants' arguments at this date are insubstantial and fly-specking.

Appellants complain that a large portion of Florida's filing fee is distributed to political parties and suggest as an alternative that Florida by-pass the parties and require each candidate to spend his filing fee in his campaign. Aside from the administrative impossibility of allowing candidates to qualify for the ballot by spending a certain sum of money in a campaign (a sum which would be unascertainable until the eve of the election), distribution of filing fee monies unencumbered to political parties has been approved by this Court in its memorandum opinion Cassidy v. Willis, ____ U.S. ____, 42 L.Ed.2d 636, ____ S.Ct. ____ (1974), affirming Cassidy v. Willis, 323 A.2d 598 (Dela. 1974). In

Cassidy v. Willis, supra, the Delaware Supreme Court affirmatively found that a state has a legitimate interest in supporting political parties "so as to encourage and strengthen them," and declined to rule its filing fee statute unconstitutional either because the fee was passed on to the party or because the fee was passed on unencumbered. 323 A.2d at 602. Additionally, at least four three-judge federal district courts have been confronted with a filing fee scheme in which a large part of the fee is distributed to support political parties, and in each of these cases, the Court indicates at least tacit recognition that support of political parties is a substantial state interest. Harper v. Vance, 342 F.Supp. 136, 144 (N.D. Ala. 1972); Spillers v. Slaughter, 325 F. Supp. 550, 553 (M.D. Fla. 1971); Fowler v. Adams, 315 F.Supp. 592, 595 (M.D. Fla. 1970); Wetherington v. Adams, 309 F.Supp. 318, 321 (N.D. Fla. 1970).

This Court has many times recognized the importance of political parties, Williams v. Rhodes, 393 U.S. 23, 30, 21 L.Ed.2d 24, 31 89 S.Ct. 5 (1968); Kuspers v. Pontikes, 414 U.S. 51, 57, 38 L.Ed.2d 260, 266, 94 S.Ct. 303 (1973), and has noted that at times political parties and government necessarily intertwine in their functions. See Smith v. Allwright, 321 U.S. 649, 88 L.Ed. 987, 64 S.Ct. 757 (1944). Florida, like California in Storer v. Brown, "believes with the founding fathers that splintered parties and unrestrained factionalism may do significant damage to the fabric of government." 415 U.S. at 736; 39 L.Ed.2d at 727. Appellants suggest that candidates rather than parties be given their filing fees for campaign expenses. Florida has chosen otherwise. Surely Florida's

decision to support and preserve that party system is a compelling state interest, a compelling interest when joined with the need to limit the ballot to serious candidates and defray state expenses, is more than sufficient to sustain the judgment of the court below.

CONCLUSION

Florida's filing fee system and petitioning alternative are so clearly within the guidelines of Bullock, Jenness, and Storer that the issues raised by this appeal are without substance and should be disposed of without further argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Motion to Affirm (Bush and Einstein); Motion to Dismiss (Fair), and Brief of Appellees, were served by first class mail this 28 day of October, 1975, on each of the following:

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